HOUSE
RESEARCH
ORGANIZATION bill analysis 4/28/87

HB 707
R. Lewis
(CSHB 707 by Tallas)

SUBJECT: Preferential purchase of U.S. and Texas products

COMMITTEE: State Affairs: committee substitute recommended

VOTE: 7 ayes--Tallas, Gibson, Guerrero, Haley, Perez, Riley, Saunders

3 nays--P. Hill, Danburg, Leonard

1 present, not voting--Laney

2 absent--Cain, Gavin

WITNESSES: For--Willie Chapman, AFL-CIO; Dane Harris, Texas Association of Business

Against--Van L. Hayes and Truman Jones, Vulcan Materials Co.; William Mogridge, Crushed Stone

BACKGROUND: Under current law state and local governmental agencies may award contracts for purchasing, construction or services to out-of-state companies only in certain instances. An out-of-state company must underbid the lowest bid submitted by a responsible Texas-resident bidder by the same amount the Texas company would have to underbid a resident in that nonresident's home state to get a state contract. If Texas products are not equal in cost and quality to those in rival bids, preference is given to other U.S. bidders over foreign bidders. The foreign-bidder provision applies only to products, not services.

DIGEST: CSHB 707 would establish a preference for Texas and U. S. firms for product purchases and construction contracts. Products would be defined as American or Texas products if at least 51 percent of their component parts were produced in the U.S.A. or Texas, respectively.

If a low bidder on a product or contract was non-Texan, preference would be given to a Texas bidder if the lowest bid came from a state with purchasing laws that provided preference for home-state firms. The amount of the preference would equal that granted in the other state.

If a Texas product or contractor were not eligible for preference, then an American-made product or American contractor would be given preference over a foreign-made product of equal quality or a foreign contractor, unless the bid by the American seller or contractor was more than 10 percent higher than the bid on the foreign-made product.

The bill would make similar requirements for contracts by political subdivisions, including school districts.

SUPPORTERS SAY:

With unemployment and bankruptcies continuing at record high levels, state and local government should do everything possible to preserve jobs in Texas. State government can help its own citizens, promote job creation and save dollars that would otherwise be spent on welfare and unemployment by giving certain purchase and contracting preferences to in-state companies and products.

CSHB 707 would build on current law and follow the example of the federal government and numerous other states. It would clarify language in current law giving purchase preference to Texas companies competing against companies from other states by adding definitions of Texas products as products with 51 percent Texas-produced components. It would also grant preference requirements for U.S. products over those produced abroad.

This law would do nothing to discourage interstate commerce. If another state does not discriminate against Texas products, Texas would not discriminate against them either. A 10 percent advantage for U. S.-made products of equal quality over foreign bidders would be fair because foreign bidders often have the cost advantage of paying low wages and few or no benefits to workers.

CSHB 707 could actually save the state money by forcing foreign bidders to come in 10 percent below any Texas bid if they really want the job. In addition, lost revenue from Texas firms resulting from unfair competition should be considered. Texans with jobs generate other jobs and help make the business climate healthy. They generate tax dollars that improve state income.

Last year, a construction contract on a Houston ship channel bridge went to a company that was able to undercut other bidders on price through use of cheaper foreign steel. Buying Texas steel instead could have meant an untold number of jobs for an area plagued with unemployment. The federal government requires U.S. steel to be used on projects when federal dollars are involved, but this was a state project using state tax dollars.

An examination of products used in the Capitol itself illustrates the problem. Everything from file folders to microphones is made by foreign or out-of-state companies. Meanwhile, other states and nations do not hesitate about discriminating against Texas products.

When California companies make a bid 5 percent higher than an out-of-state low bidder on state construction contracts or purchase of commodities of more than $100,000 in value, the bid is awarded to the California company. Maryland gives a 20 percent advantage to local over foreign steel. Indiana allows a 15 to 25 percent advantage if it is determined that use of domestic steel will benefit the local economy. Illinois allows no foreign steel to be used in any contracts or subcontracts.

The fiscal note accompanying this bill was not revised when the committee substitute replaced HB 707. CSHB 707 should not cost state government time or money to enforce. It would make the bidders prove the point of origin of a product. The state might need one more employee or so as a result of this bill, but it certainly would not need six, as the fiscal note implies. The bill would practically enforce itself.

Texas companies have been hurt by foreign companies receiving heavy subsidies from their governments. Free enterprise works if companies compete on a level playing field. This bill would send an important signal to U.S. companies that try to save money by moving jobs and production facilities abroad.

OPPONENTS SAY:

Texas is suffering from one of the worst budget crises in history, and agencies are facing the prospect of stiff budget cuts. This is no time for a bill that would cost state government, local government, universities and school districts by raising the purchase price of an untold number of products, construction projects and services by at least 10 percent, possibly more. CSHB 707 could well offset savings made by slashing agency budgets, force local school districts to raise property taxes even more, or cause layoffs of low-level employees as governmental bodies strive to pay for this measure.

This bill could be difficult to enforce. In a time when products and components are shifted among states and nations, it is not going to be easy for state agencies and local governments to determine whether bidders are being honest about a product's point of origin. Many Texas companies have branches out-of-state, and many out-of-state companies have branches in Texas. Determining exactly who is a Texas bidder, and whether 51 percent of the product was really made here, would take time and money. The whole process could delay the letting of bids and contracts at a time when the state needs to get its economy moving.

The bill might hinder the state from receiving federal funds for transportation projects. The federal government does not approve of such local-preference provisions.

This bill would send the wrong signal at a time when the state should be encouraging foreign trade. It would accelerate the trend toward protectionist barriers against countries that are potential customers for Texas exports.

The Texas Agriculture Department has been working hard on the Taste of Texas campaign and promotion of Texas products throughout the U.S. and abroad. Blue-ribbon panels of economic experts have cited improved business relationships with Mexico and other foreign countries as a key to economic diversification. From the public relations standpoint alone, this bill could be a disaster, eroding efforts to attract foreign industry and investment.

NOTES: The sponsors plan to offer a floor amendment to make preference requirements optional for all local governments and school districts.

The LBB estimated that six more state employees would be needed to determine the origin of products. It estimated that at least 30 days would be added to the purchasing period. Cost of six more employees was estimated at $194,276 in 1988; $184,276 in 1989; $189,767 in 1990 and 1991; and $195,405 in 1992.

The committee substitute for HB 707 added that the amount of purchasing preference given to a Texas company must be equal to that given in the low-bidder's home state; the original bill did not include that provision. The original bill left in an existing specification that only "responsible" Texas bidders would be granted a contract preference; the substitute would eliminate it.

The original bill would have given preference to American products if they were of equal value to foreign products; CSHB 707 would allow a 10-percent differential. The original bill would have given preference to American contractors if American bids were no more than 25 percent higher than foreign bids; CSHB 707 specifies 10 percent.

A related bill, SB 1052 by Green, would give Texas bidders whose bids were no more than 5 percent over a nonresident low bidder 30 days to meet the low bid. SB 1052 was referred to the Senate State Affairs Committee.